

# Client Rights Office

Department of Health and Family Services  
Division of Disability and Elder Services

<http://dhfs.wisconsin.gov/clientrights/index.htm>

## *Community Programs Training 2005*

### **CONDUCTING AN INVESTIGATION**

#### **INTRODUCTION**

The Client Rights Specialist's (CRS's) main objective should be to resolve the underlying problem. If that can be accomplished, there may be no need to decide whether or not a rights violation occurred. If not, a formal investigation and decision will be necessary. This training document is designed to help new CRSs investigate complaints and write decisions.

Grievances need to be investigated as completely and objectively as possible. Fair and logical resolution of complaints is the goal. The CRS must establish if there has been a violation of patient rights or if there will be a violation if some remedial action is not taken.

It is essential that CRSs keep patient rights as the focus of the investigation. This is the most important way the CRS maintains his/her objectivity and safeguards the process from manipulation or abuse. Thus, regardless of who raises the issue, the CRS needs to focus on the rights involved.

The CRS has a complex job. The CRS identifies problems, analyzes facts, and evaluates evidence. The CRS talks with, questions and listens to staff and clients -- making good communication skills an obvious essential. The investigator educates, arbitrates, and conciliates, trying to ensure communication between all relevant individuals whose participation is needed to resolve a grievance. The CRS makes decisions and documents those decisions. In the grievance procedure, the CRS is the central figure.

A good investigator relies heavily on initiative, imagination, flexibility, and the principle of trial and error. It is impossible to substitute "rules of investigation" for these qualities. Often, an investigator does not know what s/he is looking for until s/he finds it. For very important issues, it is vital to pursue every possible logical avenue.

The investigator must be accessible to clients. S/he must know the provider agency s/he must know the pertinent law. The investigator must work to develop trust with the staff and clients.

#### **STEPS IN FORMALLY INVESTIGATING A COMPLAINT**

##### **A. IDENTIFYING THE PROBLEM - INTERVIEWING THE COMPLAINANT**

1. Introduce yourself and your role in the situation.
2. Describe the grievance process (stages, right of appeal, etc).

3. Ask the complainant for all the information you need from him/her:
  - a. **What** happened (chronologically, clearly and completely)
  - b. **Who** is involved (include witnesses' names)
  - c. **Where** it happened
  - d. **When** it happened and/or how often
  - e. **What**, if any, prior solutions have been tried.
  - f. Any available **evidence**? (treatment plan, incident report, request form, etc.)
4. Restate the problem and ask for feedback.
5. Clarify anything that is unclear and fill in any gaps in information.

## **B. ANALYZE THE PROBLEM AND PREPARE FOR INVESTIGATION**

1. Categorize the complaint:
  - a. Which right is involved?
  - b. What is needed to satisfy or protect the right for this individual or situation?
  - c. Can that right be restricted by law?
  - d. Is the restriction appropriate in this situation?
2. Identify relevant components:
  - a. Cause of the complaint
  - b. Chronology of events
  - c. People involved
  - d. Relevant sources of information
  - e. Information gaps that may require research
  - f. Areas of potential change
  - g. Any obstacles to resolution of the problem
3. Develop an investigative plan:
  - a. Who do you want to interview?
  - b. What personal observation should be done? (visit scene?)
  - c. What information is needed to fill any gaps?
  - d. How can obstacles be overcome?
  - e. Know what facts you will be relying on – decide how to verify them.

## **C. INTERVIEWING WITNESSES**

1. Interview all witnesses and involved parties:
  - a. Introduce yourself and your role
  - b. Explain what you want to know and why
  - c. Consider motives and attitudes of the interviewee
  - d. Be attuned to nonverbal cues
  - e. Solicit possible solutions to the underlying problem (when relevant)
  - f. End the interview when goal is reached or when it becomes clear that it will not be possible to reach the goal
  - g. Take notes - **do not rely on memory**

2. Interviewing skills:

- a. Don't make up your mind before reviewing the facts
- b. Be tolerant and conciliatory, when possible, with witnesses who may be hostile, skeptical, or disinterested
- c. Use your communication skills to encourage witnesses to discuss the situation openly.

3. After the interview:

- a. Record your personal feelings and reactions – but label them as such
- b. Record your perceptions of non-verbal cues
- c. Distinguish between facts/ hearsay/ opinions
- d. Note whether information substantiates or refutes previous testimony.

**D. CONDUCTING THE REST OF THE INVESTIGATION**

- 1. Personally observe the situation yourself (when relevant)
- 2. Look at records, such as the client treatment record, when necessary
- 3. Assess impact on other similarly situated patients
- 4. Assess the application of any relevant division or institute policies
- 5. Use available research tools such as:
  - a. Consult with CRO staff
  - b. Review precedents in the Community Decision Digest
  - c. Review other legal documents
  - d. Consult resources such as the library or Internet

**E. ANALYZING THE EVIDENCE**

- 1. Evidence is whatever tends to **prove or disprove** a fact.
- 2. Evaluate the testimony (verbal evidence)
  - a. Different people always have different versions of events. Inconsistent versions of the same event do not necessarily indicate bad faith or lying.
  - b. Any person's version is usually only **one piece** of the puzzle.
  - c. Separate each person's **opinions** from the **facts**.
  - d. Weigh each witness's **credibility** with regard to the issue at hand:
    - (1) Were they in a position to actually witness the events?
    - (2) Is the person generally reliable?
    - (3) Do they have any reason not be truthful about this matter?
    - (4) Was their testimony consistent?
    - (5) Was there any corroborating evidence?
- 3. Evaluate the **physical evidence**

- a. Are there any physical traces of the events?
  - b. Is the evidence relevant?
  - c. Does the evidence tend to prove or disprove any facts involved?
4. Do you have all the evidence? Or do you need to do more investigating?

## F. REACHING CONCLUSIONS

1. Determine the **burden of proof** (Is the burden on the facility or the patient?)
2. Decide which **facts** you can "find"
3. Use the formula: **FACTS + LAW = CONCLUSIONS** (outcome)

The CRS's report should reflect the above process. It should present the complaint in brief and make clear the issues that determine the outcome of the grievance. The facts established by the investigation may be presented in narrative style. However, the sources of facts which are material to the outcome must be included.

Also, when the CRS has made an assessment of credibility in order to resolve conflicts between evidence, the reasons that a particular account was considered credible or not must be given (using factors such as those listed above under "analyzing the evidence"). It is not essential to have a separate "findings" section, however, findings of fact and the bases for those findings should be clear.

The report should set out the law, policies and grievance precedents that are relevant to the issue(s) raised. These laws, policies and precedents should then be applied to the findings of fact so that a conclusion can be reached.

The report must conclude either that a violation of patient rights did occur (i.e., that it is more likely than not that a violation occurred) or will occur without remedial action, that no violation of patient rights was found, or that the CRS was unable to substantiate the complaint. Finally, the report should include any and all appropriate recommendations to remedy any present violation(s), prevent future violations, or make the provider agency's policy and practice more consistent with patient rights.

For follow-up, unless a Level I decision has been appealed and overturned at a higher stage of the grievance procedure, the CRS is responsible for following up on the implementation of any recommendations made at Level I.

Finally, the grievance report at every level in the procedure **must include information about how to appeal the decision to the next level**. This may be done by briefly explaining the client's right to appeal, including the timeframes required to do so, and instructions about how to appeal. Many agencies and counties instruct the client to write or call the CRS who issued the report to inform them of their wish to appeal the decision. It is also appropriate to inform the client of who to contact at the next level of appeal, and how to do so. Appeals are best handled in writing, but if doing so via telephone or other means is necessary for accessibility then that is also acceptable to continue in the grievance procedure.